

Members

Rep. Jud McMillin  
Rep. Ralph Foley  
Rep. John Bartlett  
Rep. Clyde Kersey  
Sen. James Banks  
Sen. R. Michael Young  
Sen. James Arnold  
Sen. Greg Taylor  
Gary Miller  
Gary Roberts  
Hon. Margret G. Robb  
Mike McMahon  
Jerry Bonnet  
Matt Light  
Anita Samuel



## CODE REVISION COMMISSION

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John Stieff, Attorney for the Commission

Authority: IC 2-5-1.1-10

### MEETING MINUTES<sup>1</sup>

Meeting Date: August 28, 2012  
Meeting Time: 10:00 A.M.  
Meeting Place: State House, 200 W. Washington  
St., Room 233  
Meeting City: Indianapolis, Indiana  
Meeting Number: 1

**Members Present:** Rep. Jud McMillin; Rep. Ralph Foley; Rep. John Bartlett; Rep. Clyde Kersey; Sen. R. Michael Young; Sen. Greg Taylor; Gary Miller; Gary Roberts; Hon. John G. Baker representing Hon. Margret G. Robb; Mike McMahon; Jerry Bonnet; Matt Light; Anita Samuel.

**Members Absent:** Sen. James Banks; Sen. James Arnold.

**Staff Present:** Mr. Jack Ross, Executive Director, Legislative Services Agency; Mr. John Stieff, Director, Office of Code Revision, Legislative Services Agency; Mr. Craig Mortell, Deputy Director, Office of Code Revision; Mr. John Kline, Attorney, Office of Code Revision; Ms. Stephanie Lawyer, Attorney, Legislative Services Agency; Michael Mullins, Office of Code Revision; Katie Hill, Office of Code Revision.

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<sup>1</sup> These minutes, exhibits, and other materials referenced in the minutes can be viewed electronically at <http://www.in.gov/legislative>. Hard copies can be obtained in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for hard copies may be mailed to the Legislative Information Center, Legislative Services Agency, West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for hard copies.

## **I. CALL TO ORDER**

The meeting was called to order at 10:00 a.m. by Representative Ralph Foley.

## **II. ELECTION OF CHAIR**

A motion was made and seconded to nominate Representative Ralph Foley to be the new Chairman of the Code Revision Commission. Representative Foley was elected Chairman by consent.

## **III. INTRODUCTION**

Mr. John Stieff, Director of the Office of Code Revision (OCR), made a few introductory remarks and explained continuing projects dealing with publication of emergency rulemaking provisions, the technical corrections bill, and the legislative services agency drafting manual for discussion by the Commission.

## **IV. DISCUSSION OF TECHNICAL CORRECTIONS BILL**

Representative Foley recognized Craig Mortell, deputy director of OCR, for the discussion of PD 3030, the draft of the 2013 technical corrections (TC) bill. Before speaking, Mr. Mortell distributed to commission members: (1) a two-SECTION proposed addition to the text of PD 3030; and (2) a single-page explanation of the way in which the TC bill resolves technical conflicts between differing versions of an Indiana Code section.

Mr. Mortell then drew the Commission's attention to the SECTION-by-SECTION outline of PD 3030, saying that it is intended to identify the problem has been perceived in each Code section in PD 3030 and explain how PD 3030 would resolve each problem. He said that the provisions of PD 3030, like those of the TC bill drafts of past years, fall within two broad categories: (1) conflict resolution SECTIONS; and (2) "everything else," i.e., SECTIONS resolving problems other than conflicts, including incorrect statutory references, nonstandard tabulation, grammatical problems, and misspellings.

Concerning the conflict resolution SECTIONS, Mr. Mortell made the following comments: The only sort of conflict that is resolved in the TC bill draft is a "technical" conflict, that is, one that does *not* involve the meaning or effect of the law. When a technical conflict arises, the Code ends up containing not one but two (or more) versions of the Code section affected by the conflict. The multiple versions of the Code section remain in the Code until the following year's TC bill resolves the conflict by merging the multiple versions into one version. There are fewer technical conflicts (14 in all) to be resolved in the 2013 TC bill than there have been in many previous years because there was a deliberate, cooperative effort on the part of many (including legislators, House and Senate partisan attorneys, LSA executive director Jack Ross, OCR director John Stieff, and attorneys of the LSA) during the 2012 legislative session to resolve conflicts before the conflicting bills became enrolled acts.

Concerning the SECTIONS falling within the "everything else" category, Mr. Mortell made the following comments: One major subcategory of this category is comprised of SECTIONS that, like SEA 115 of the 2012 session [P.L.119-2012], relate to the updating, in accordance with the results of the 2010 decennial census, of the population parameters by which certain Code sections identify certain local governmental entities. Six SECTIONS of PD 3030 are within this subcategory, and so are the two SECTIONS set forth in the proposed addition distributed to the Commission members at the meeting.

Mr. Mortell discussed the two SECTIONS set forth in the proposed addition, which would amend IC 6-6-6.5-21.5 and IC 33-38-11-10, and said that the two addressed situations that came to OCR's attention after PD 3030 was printed. Representative Foley asked for and received the Commission's consent, for purposes of discussion, to treat the two handout SECTIONS as though they were included in the contents of PD 3030.

Senator Greg Taylor commented that rather than taking the approach of SEA 115 [P.L.119-2012] in the future (i.e., updating statutory population parameters identifying local governmental entities whenever there is a new decennial census), he would prefer that the General Assembly replace the population parameters with the names of the local governmental entities.

Representative Foley stated that the Criminal Code Evaluation Commission is in the midst of an immense, multi-year project that involves the redrafting of much of Title 35 of the Indiana Code, and he pointed out that several other SECTIONS within PD 3030 (approximately beginning with SECTION 78, amending IC 35-31.5-2-10, through SECTION 128, adding IC 35-31.5-2-333.9) are technical corrections related to SEA 26 [P.L.114-2012], a 2012 act that was a product of the Criminal Code Evaluation Commission's redrafting of the criminal law.

In response to Representative Foley's question, Mr. Mortell agreed that the SECTIONS to which Representative Foley referred are purely technical in nature, mainly involving the relocation of definitions from one article of Title 35 to the new comprehensive criminal law definitions chapter added by SEA 26. Representative Foley paused to allow members of the Commission to review those SECTIONS to ensure that they were comfortable with the inclusion of those SECTIONS in the TC bill draft.

Senator Young asked about SECTION 10 (amending IC 5-22-1-0.1), SECTION 11 (amending 5-22-2-0.1), and SECTION 12 (amending IC 5-22-3-0.1), three SECTIONS in which existing Code text stating that certain amendments enacted in 2005 apply only to contracts "entered into or renewed after May 11, 2005" was being amended to state that the 2005 amendments apply only to contracts "entered into or renewed after May 6, 2005". Mr. Stieff and Mr. Mortell explained that, while one act containing the 2005 amendments took effect "UPON PASSAGE" on *May 11*, 2005, it has come to light that another act containing the 2005 amendments in identical form took effect "UPON PASSAGE" on *May 6*, 2005, and that this was why SECTIONS 10 through 12 were altering the statutory statement of the date as of which the 2005 amendments became effective.

Jerry Bonnet asked whether the Code states somewhere that population parameters set forth in the Code always relate to population figures as of a certain decennial census, and whether there is a conversion table in the Indiana Code or in commercially published editions of the Code that indicates plainly which population parameter relates to which political entity.

Mr. Stieff and Mr. Mortell looked in the Code for an answer to Mr. Bonnet's first question. IC 1-1-4-5, which sets forth definitions that "apply to the construction of all Indiana statutes," states that the term "population," as used in any Indiana statute, "has the meaning set forth in IC 1-1-3.5-3." IC 1-1-3.5-3, in turn, provides that ". . . a reference to population is a reference to population as determined by the most recent of the following:

- (1) Federal decennial census.
- (2) Federal special census.
- (3) Special tabulation.
- (4) Corrected population count."

Mr. Mortell commented that there are few, if any, "close calls" among the SECTIONS of PD 3030 that should be brought to the Commission's special attention. He mentioned SECTION 4, which amends IC 4-3-3-1.1, a section concerning the pensions of former governors, by inserting a conjunction that was lost from IC 4-3-3-1.1(f) through a 1998 amendment, and said that he hoped all would be comfortable with the restoration of the lost conjunction. Anita Samuel said that she was aware of the proposed restoration of the lost conjunction and did not express any reservations about it.

Representative Foley asked Mr. Mortell to repeat the four-part test that OCR uses in determining whether it is appropriate to address a particular matter in the TC bill draft that OCR prepares for the Commission. That test is that, generally, a matter is not to be addressed in the TC bill draft unless:

- (1) it is clear that there is a mistake or problem of some sort;
- (2) there is only one way in which the mistake or problem can be corrected;
- (3) the one way of correcting the mistake or problem is apparent on the face of the Code section itself; and
- (4) the proposed correction will not make a substantive change in the law.

Mr. Mortell expressed appreciation for all of the help he received in preparing PD 3030, particularly the many good "tips" on problems provided by the attorneys of LSA's Office of Bill Drafting and Research after their post-session review of the 2012 acts, and also the help Mr. Mortell received from his co-workers in OCR, and especially from John Kline, during recent unavoidable absences from the office.

By a voice vote, the members of the Commission voted 13 - 0 in favor of adopting PD 3030, with the two additional SECTIONS included, as a bill prepared for the Code Revision Commission.

## **V. PROPOSED REWRITE OF EMERGENCY RULEMAKING STATUTE**

Mr. John Stieff, Director of the Office of Code Revision, explained to the Commission certain problems presented from year to year in the publication of the emergency rulemaking statute, IC 4-22-2-37.1. Mr. Stieff noted that the list in IC 4-22-2-37.1(a) enumerating the rules that may be adopted under section 37.1 is incomplete. He mentioned that some rulemaking authority could be found throughout the Code that was not listed. In addition, Mr. Stieff noted that some of the rulemaking in the nonsubstantive list did not have a corresponding grant of authority in the substantive law. Mr. Stieff explained briefly the following approaches available to the Commission for correcting the problems and to ensure a clear publication of IC 4-22-2-37.1:

- A. Strike subsection IC 4-22-2-37.1(a) and replace it with a general statement of applicable rulemaking procedures.
- B. Strike subsection IC 4-22-2-37.1(a) and organize the list in a new chapter with separate sections for each agency.

Mr. Stieff introduced Mr. Michael Mullins, Office of Code Revision, to explain the

issues and proposals in further detail. Mr. Mullins presented a handout to the Commission enumerating the three main issues and options for the Commission to consider in addressing each. First, Mr. Mullins noted that the list in IC 4-22-2-37.1(a) contains concurrent, overlapping additions that have become a perennial source of statutory conflict. Mr. Mullins referred to Mr. Stieff's two proposed options for addressing the issue. Mr. Stieff commented that there is an advantage to the first proposal because it would address the issue of a rulemaking list for all time, as the general statement of procedure would apply to any future rulemaking. Mr. Stieff noted that the advantage to the second proposal is that the comprehensive list would be available for research by the Attorney General's office, agencies, and practicing attorneys. However, he stated that the second approach would necessitate an amendment to the agency list in the new chapter each time a new authority is added elsewhere in the Code.

Chairman Foley noted that neither approach would result in the Commission creating new rulemaking, and that the changes would not be substantive. Mr. Mullins stated that, while the approaches sought to avoid substantive issues, a few references to rulemaking in the list do not correspond to specific rulemaking authority in the substantive Code. Chairman Foley responded that there may be some false reliance on the list. Mr. Gary Roberts asked if the list was needed since the Attorney General could make a list without it being part of the Indiana Code and the information contained in the list is not substantive in nature. Mr. Stieff agreed that the list is not necessary in the Code and suggested that a list could be maintained on the Indiana Administrative Code internet website. Representative John Bartlett, Senator R. Michael Young, and Senator Greg Taylor discussed situations in which rulemaking by an agency is in contravention of statutory authority, and problems that could arise from the legislature granting or removing statutory authority for certain rulemaking. Mr. Jerry Bonnet expressed a preference in having the authorities listed for each agency by chapter. Mr. Matt Light noted the similarity between the Title 4 issues and the issues from the previous session in a bill moving definitions in Title 35. He noted that there would be less reconciliation if IC 4-22-2-37.1(a) were dropped and the authorities organized by agency. Some discussion ensued regarding confusion with the authorities contained within the list, and whether some of the references in the list created authority or not. Chairman Foley suggested that ambiguities in authorities could be resolved in a trailer bill.

Chairman Foley noted that it would be beneficial for the Commission members to have drafts of the alternate proposals to review for the next Commission meeting. Mr. Stieff stated that the Legislative Services Agency (LSA) would mail drafts to the members before the next meeting. Some discussion ensued regarding the procedures LSA drafters use to draft provisions for rulemaking authority. Mr. Roberts and Chairman Foley clarified that the Commission has the authority to make substantive recommendations regarding the legislation, but that the substantive legislation could not be presented in the technical corrections bill and would need to be drafted as a separate trailer bill.

## **VI. PROPOSED DRAFTING MANUAL REVISIONS**

Mr. Stieff introduced Ms. Stephanie Lawyer, Attorney in the Office of Code Revision, to explain the rewrite of the drafting manual. Ms. Lawyer noted broad changes to the drafting manual, including noting current drafting practices, making distinctions between noncode and Code provisions, adjusting for style, stating instructions for dealing with new Code such as the Title 35 definitions provision, drafting repealers, and removing outdated and inaccurate references. In addition, the rewrite will deal with changes resulting from the outcome of the Commission's decision regarding rulemaking.

Ms. Lawyer stated that the drafting manual would be sent to the Commission and posted to the legislative internet website. She noted that the Commission will receive color copies of the draft with an explanation of the color codes for inserted material, material proposed to be removed, and revised material. Ms. Lawyer suggested a date of September 28 for receiving comments and questions from the interested parties, to allow for incorporation into the draft for the next Commission meeting.

Chairman Foley asked if the drafting manual included any adjustments to the Joint Rule 20 process, and Ms. Lawyer stated that the process is the same; however, the form is updated. Ms. Lawyer noted that the size of the drafting manual would be increased considerably with the rewrite, mostly due to the inclusion of boilerplate and exhibits to ensure the consistency of legislative documents. Hon. John G. Baker noted that the drafting manual does not need legislative action, and that it is simply a recommendation from the Commission to the Legislative Council. Chairman Foley thanked Ms. Lawyer for her work and noted that a revision to the drafting manual is necessary for clarity in drafting.

## **VII. OTHER BUSINESS**

The Commission members discussed the details for the next meeting and agreed to hold the next meeting on Tuesday, October 16, at 10:00 a.m. Judge Baker commended Chairman Foley for his years of service to the legislature and work for the Commission. Judge Baker expressed his hope that the legislative members who follow Chairman Foley remember what the Chairman stands for, and that the Chairman does his best to promote lofty ideals as an attorney and a Hoosier.

## **VIII. ADJOURNMENT**

Chairman Foley thanked the staff and members for their work. The meeting was adjourned by Chairman Foley at 11:45 a.m.